

DEPARTMENT OF CONSERVATION AND RECREATION

EROSION AND SEDIMENT CONTROL ORDINANCE

(Detailed Version--Revised April 25, 2003)

Note: This document has been reviewed by Department staff and was found to meet the requirements of the State Erosion and Sediment Control (ESC) Program. This document is provided as guidance to localities in developing and revising a local ESC ordinance. We recommend that localities thoroughly review the ordinance to ensure that the ordinance is appropriate and consistent with local government programs and policies. Prior to adding or deleting any item, localities may contact the local DCR Urban Programs representative for assistance.

Section 10-1. TITLE, PURPOSE, AND AUTHORITY

This ordinance shall be known as the "Erosion and Sediment Control Ordinance of [program authority]." The purpose of this chapter is to prevent degradation of properties, stream channels, waters and other natural resources of the [program authority] by establishing requirements for the control of soil erosion, sediment deposition and nonagricultural runoff and by establishing procedures whereby these requirements shall be administered and enforced.

This Chapter is authorized by the Code of Virginia, Title 10.1, Chapter 5, Article 4 (Sec. 10.1-560 et seq.), known as the Virginia Erosion and Sediment Control Law.

Section 10-2. DEFINITIONS: As used in the ordinance, unless the context requires a different meaning:

- A. **"Agreement in lieu of a plan"** means a contract between the plan-approving authority and the owner that specifies conservation measures that must be implemented in the construction of a single-family residence; this contract may be executed by the plan-approving authority in lieu of a formal site plan.
- B. **"Applicant"** means any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.
- C. **"Board"** means the Virginia Soil and Water Conservation Board.
- D. **"Certified inspector"** means an employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of project inspection or (ii) is enrolled in the Board's training program for project inspection and successfully completes such program within one year after enrollment.
- E. **"Certified plan reviewer"** means an employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of plan review, (ii) is enrolled in the Board's training program for plan review and successfully completes such program within one year after enrollment, or (iii) is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (Sec. 54.1-400 et seq.) of Chapter 4 of Title 54.1.
- F. **"Certified program administrator"** means an employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of program administration or (ii) is enrolled in the Board's training program for program administration and successfully completes such program within one year after enrollment.
- G. **"City"** means the City of [program authority]. (if applicable)
- H. **"Clearing"** means any activity which removes the vegetative ground cover including, but not limited to, root mat removal or top soil removal. (optional or local definition may be used)
- I. **"County"** means the County of [program authority]. (if applicable)

- J. **"Department"** means the Department of Conservation and Recreation.
- K. **"Development"** means a tract of land developed or to be developed as a single unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units.
- L. **"Director"** means the director of the Department.
- M. **"District"** or **"Soil and Water Conservation District"** refers to the **[name of district]** Soil and Water Conservation District.
- N. **"Erosion and Sediment Control Plan"** or **"Plan"** means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory, and management information with needed interpretations and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.
- O. **"Erosion Impact Area"** means an area of land not associated with current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes [or to shorelines where the erosion results from wave action or other coastal processes.] **(Include shoreline reference, if applicable)**
- P. **"Excavating"** means any digging, scooping or other methods of removing earth materials. **(optional or local definition)**
- Q. **"Filling"** means any depositing or stockpiling of earth materials. **(optional or local definition)**
- R. **"Grading"** means any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled conditions. **(optional or local definition)**
- S. **"Land-disturbing Activity"** means any land change which may result in soil erosion from water or wind and the movement of sediments into State waters or onto lands in the Commonwealth, including, but not limited to, clearing, grading, excavating, transporting and filling of land, except that the term shall not include:
- (1) Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;
 - (2) Individual service connections;
 - (3) Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street or sidewalk provided such land-disturbing activity is confined to the area of the road, street or sidewalk which is hard-surfaced;
 - (4) Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
 - (5) Surface or deep mining;
 - (6) Exploration or drilling for oil and gas including the well site, roads, feeder lines, and off-site disposal areas;

- (7) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations; including engineering operations and agricultural engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the Dam Safety Act, Article 2, (Sec. 10.1-604 et seq.) of Chapter 6, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (Sec. 10.1-1100 et seq.) of this title or is converted to bona fide agricultural or improved pasture use as described in Subsection B of Sec. 10.1-1163;
- (8) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;
- (9) Disturbed land areas of less than 10,000 square feet in size; **[however the governing body of the program authority may reduce this exception to a smaller area of disturbed land or qualify conditions under which this exception applies]**
- (10) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
- (11) Shoreline erosion control projects on tidal waters when all of the land disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this ordinance; and
- (12) Emergency work to protect life, limb or property, and emergency repairs; provided that if the land-disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the plan-approving authority.

- T. **"Land-disturbing Permit"** means a permit issued by **[program authority]** for the clearing, filling, excavating, grading, transporting of land or for any combination thereof or for any purpose set forth herein. **(optional or local definition)**
- U. **"Local erosion and sediment control program"** or **"local control program"** means an outline of the various methods employed by **[program authority]** to regulate land-disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program and may include such items as local ordinances, policies and guidelines, technical materials, inspection, enforcement, and evaluation.
- V. **"Owner"** means the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a property.
- W. **"Permittee"** means the person to whom the permit authorizing land-disturbing activities is issued or the person who certifies that the approved erosion and sediment control plan will be followed.
- X. **"Person"** means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town or other political subdivision of the commonwealth, any interstate body, or any other legal entity.
- Y. **"Plan-approving authority"** means the **[department or position title]** responsible for determining the adequacy of a plan submitted for land-disturbing activities on a unit or units of lands and for approving plans.
- Z. **"Program authority"** means the **[locality]** which has adopted a soil erosion and sediment control program approved by the Board.

- AA. **"Responsible Land Disturber"** means an individual from the project or development team, who will be in charge of and responsible for carrying out a land-disturbing activity covered by an approved plan or agreement in lieu of a plan, who (i) holds a Responsible Land Disturber certificate of competence, (ii) holds a current certificate of competence from the Board in the areas of Combined Administration, Program Administration, Inspection, or Plan Review, (iii) holds a current Contractor certificate of competence for erosion and sediment control, or (iv) is licensed in Virginia as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (Sec. 54.1-400 et seq.) of Chapter 4 of Title 54.1.
- BB. **"Single-family residence"** means a noncommercial dwelling that is occupied exclusively by one family.
- CC. **"State Erosion and Sediment Control Program"** or **"State Program"** means the program administered by the Virginia Soil and Water Conservation Board pursuant to the Code of Virginia including regulations designed to minimize erosion and sedimentation.
- DD. **"State Waters"** means all waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdictions.
- EE. **"Town"** means the incorporated town of **[program authority]**. (if applicable)
- FF. **"Transporting"** means any moving of earth materials from one place to another place other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs. (optional or local definition)

Section 10-3. LOCAL EROSION AND SEDIMENT CONTROL PROGRAM

- A. Pursuant to section 10.1-562 of the Code of Virginia, the **[program authority]** hereby adopts the regulations, references, guidelines, standards and specifications promulgated by the Board **[and any local handbook or publication]** for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources. Said regulations, references, guidelines, standards and specifications for erosion and sediment control are included in but not limited to the "Virginia Erosion and Sediment Control Regulations" and the Virginia Erosion and Sediment Control Handbook, as amended.
- B. Before adopting or revising regulations, the **[program authority]** shall give due notice and conduct a public hearing on the proposed or revised regulations, except that a public hearing shall not be required when the **[program authority]** is amending its program to conform to revisions in the state program. However, a public hearing shall be held if the **[program authority]** proposes or revises regulations that are more stringent than the state program.

Note: DCR highly recommends that a public hearing be held when the ordinance is amended or revised.

- C. Pursuant to Sec. 10.1-561.1 of the Code of Virginia, an erosion control plan shall not be approved until it is reviewed by a certified plan reviewer. Inspections of land-disturbing activities shall be conducted by a certified inspector. The Erosion Control Program of **[program authority]** shall contain a certified program administrator, a certified plan reviewer, and a certified inspector, who may be the same person.
- D. The **[program authority]** hereby designates **[department or position title]** as the plan-approving authority.
- E. The program and regulations provided for in this ordinance shall be made available for public inspection at the office of the **[department or position title]**.

Section 10-4. SUBMISSION AND APPROVAL OF PLANS; CONTENTS OF PLANS

- A. Except as provided herein, no person may engage in any land-disturbing activity until he or she has submitted to the **[department or position title]** for **[program authority]** an erosion and sediment control plan for the land-disturbing activity and such plan has been approved by the plan-approving authority. Where land-disturbing activities involve lands under the jurisdiction of more than one local control program, an erosion and sediment control plan, at the option of the applicant, may be submitted to the Board for review and approval rather than to each jurisdiction concerned.

Where the land-disturbing activity results from the construction of a single-family residence, an "agreement in lieu of a plan" may be substituted for an erosion and sediment control plan if executed by the plan-approving authority.

- B. The standards contained within the "Virginia Erosion and Sediment Control Regulations", the Virginia Erosion and Sediment Control Handbook and **[any local handbook or publication]** are to be used by the applicant when making a submittal under the provisions of this ordinance and in the preparation of an erosion and sediment control plan. The plan-approving authority, in considering the adequacy of a submitted plan, shall be guided by the same standards, regulations and guidelines. When the standards vary between the publications, the State regulations shall take precedence.
- C. The plan-approving authority shall review conservation plans submitted to it and grant written approval within 45 days of the receipt of the plan if it determines that the plan meets the requirements of the Board's regulations and if the person responsible for carrying out the plan certifies that he will properly perform the conservation measures included in the plan and will conform to the provisions of this article. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence, to the program authority, as provided by § 10.1-561, of the Virginia Erosion and Sediment Control Law, who will be in charge of and responsible for carrying out the land-disturbing activity. Failure to provide the name of an individual holding a certificate of competence prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this ordinance.

The following additional text is optional at the discretion of the Program Authority- However, the plan-approving authority may waive the certificate of competence requirement for an agreement in lieu of a plan for construction of a single family residence. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of an individual holding a certificate of competence, as provided by § 10.1-561 of the Virginia Erosion and Sediment Control Law. Failure to provide the name of an individual holding a certificate of competence shall be a violation of this ordinance. **End of optional text.**

- D. The plan shall be acted upon within 45 days from receipt thereof by either approving said plan in writing or by disapproving said plan in writing and giving specific reasons for its disapproval.

When the plan is determined to be inadequate, the plan-approving authority shall specify such modifications, terms and conditions that will permit approval of the plan. If no action is taken within 45 days, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.

- E. An approved plan may be changed by the plan-approving authority when:
- (1) The inspection reveals that the plan is inadequate to satisfy applicable regulations; or
 - (2) The person responsible for carrying out the plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this ordinance, are agreed to by the plan-approving authority and the person responsible for carrying out the plans.
- F. In order to prevent further erosion, the **[program authority]** may require approval of a plan for any land identified in the local program as an erosion impact area.

- G. When land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.
- H. Electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies and railroad companies shall file general erosion and sediment control specifications annually with the Board for review and written comments. The specifications shall apply to:
1. Construction, installation or maintenance of electric, natural gas and telephone utility lines, and pipelines; and;
 2. Construction of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of the railroad company.
- Individual approval of separate projects within subdivisions 1 and 2 of this subsection is not necessary when Board approved specifications are followed, however, projects included in subdivisions 1 and 2 must comply with Board approved specifications. Projects not included in subdivisions 1 and 2 of this subsection shall comply with the requirements of the **[program authority]** erosion and sediment control program.
- I. State agency projects are exempt from the provisions of this ordinance except as provided for in the Code of Virginia, Sec. 10.1-564.

Section 10-5. PERMITS; FEES; SECURITY FOR PERFORMANCE

- A. Agencies authorized under any other law to issue grading, building, or other permits for activities involving land-disturbing activities may not issue any such permit unless the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed.
- B. No person may engage in any land-disturbing activity until he has acquired a land-disturbing permit, unless the proposed land-disturbing activity is specifically exempt from the provisions of this ordinance, and has paid the fees and posted the required bond.
- C. An administrative fee of **[amount, fee schedule, or reference to local ordinance]** shall be paid to **[program authority]** at the time of submission of the erosion and sediment control plan.
- D. No land-disturbing permit shall be issued until the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed.
- E. All applicants for permits shall provide to the **[program authority]** a performance bond, cash escrow, or an irrevocable letter of credit acceptable to the **[position title]**, to ensure that measures could be taken by the **[program authority]** at the applicant's expense should the applicant fail, after proper notice, within the time specified to initiate or maintain appropriate conservation measures required of him as a result of his land-disturbing activity.

The amount of the bond or other security for performance shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty-five percent of the cost of the conservation action. Should it be necessary for the **[program authority]** to take such conservation action, the **[program authority]** may collect from the applicant any costs in excess of the amount of the surety held.

Within sixty (60) days of adequate stabilization, as determined by **[department or position title]** in any project or section of a project, such bond, cash escrow or letter of credit, or the unexpended or unobligated portion thereof shall be either refunded to the applicant or terminated, based upon the percentage of stabilization accomplished in the project or project section.

- F. These requirements are in addition to all other provisions relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.

Section 10-6. MONITORING, REPORTS, AND INSPECTIONS

- A. The **[program authority]** may require the person responsible for carrying out the plan to monitor the land-disturbing activity. The person responsible for carrying out the plan will maintain records of these inspections and maintenance, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.
- B. The **[department or position title]** shall periodically inspect the land-disturbing activity in accordance with Sec 4VAC50-30-60 of the Virginia Erosion and Sediment Control Regulations to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection.

If the **[position title]** determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities.

The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the specified time, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this ordinance and shall be subject to the penalties provided by this ordinance.

- C. Upon determination of a violation of this ordinance, the **[position title]** may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken.

If land-disturbing activities have commenced without an approved plan, the **[position title]** may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, issue an order requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained.

Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved plan or any required permits, such an order may be issued without regard to whether the permittee has been issued a notice to comply as specified in this ordinance. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply.

The order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven days from the date of service pending application by the enforcing authority or permit holder for appropriate relief to the Circuit Court of **[program authority]**.

If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the order, the **[position title]** may issue an order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained. Such an order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the land records of **[program authority]**.

The owner may appeal the issuance of an order to the Circuit Court of **[program authority]**.

Any person violating or failing, neglecting or refusing to obey an order issued by **[position title]** may be compelled in a proceeding instituted in the Circuit Court of **[program authority]** to obey same and to comply therewith by injunction,

mandamus or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted.

Nothing in this section shall prevent the **[position title]** from taking any other action authorized by this ordinance.

Section 10-7. PENALTIES, INJUNCTIONS, AND OTHER LEGAL ACTIONS

- A. Violators of this ordinance shall be guilty of a Class I misdemeanor.
- B. Any person who violates any provision of this ordinance shall, upon a finding of the District Court of **[program authority]**, be assessed a civil penalty. The civil penalty for any one violation shall be \$100, except that the civil penalty for commencement of land-disturbing activities without an approved plan shall be \$1,000. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of \$3,000, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of \$10,000.

Note: The adoption of civil penalties according to this schedule shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor under subsection A of this section. Refer to Code of Virginia, Sec. 10.1-562 J.

- C. The **[position title]**, or the owner or property which has sustained damage or which is in imminent danger of being damaged, may apply to the Circuit Court of **[name of locality]** to enjoin a violation or a threatened violation of this ordinance, without the necessity of showing that an adequate remedy at law does not exist.

However, an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the local program, and the program authority, that a violation of the local program has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the local program nor the program authority has taken corrective action within fifteen days to eliminate the conditions which have caused, or create the probability of causing, damage to his property.

- D. In addition to any criminal penalties provided under this ordinance, any person who violates any provision of this ordinance may be liable to **[name of locality]** in a civil action for damages.
- E. Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. A civil action for such violation or failure may be brought by the **[program authority]**.

Any civil penalties assessed by a court shall be paid into the treasury of **[program authority]**, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

- F. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or condition of a permit or any provision of this ordinance, the **[program authority]** may provide for the payment of civil charges for violations in specific sums, not to exceed the limit specified in Subsection E of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under Subsection E.
- G. The Commonwealth's Attorney shall, upon request of the **[program authority]** or the permit issuing authority, take legal action to enforce the provisions of this ordinance.

- H. Compliance with the provisions of this ordinance shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion, siltation or sedimentation that all requirements of law have been met, and the complaining party must show negligence in order to recover any damages.

Section 10-8. APPEALS AND JUDICIAL REVIEW

- A. Any applicant under the provision of this ordinance who is aggrieved by any action of the **[program authority]** or its agent in disapproving plans submitted pursuant to this ordinance shall have the right to apply for and receive a review of such action by the **[governing body (i.e., town council, city council, or board of supervisors)]** provided an appeal is filed within 30 days from the date of the action. Any applicant who seeks an appeal hearing before the **[governing body]** shall be heard at the next regularly scheduled **[governing body]** public hearing provided that the **[governing body]** and other involved parties have at least 30 days prior notice. In reviewing the agent's actions, the **[governing body]** shall consider evidence and opinions presented by the aggrieved applicant and agent. After considering the evidence and opinions, the **[governing body]** may affirm, reverse or modify the action. The **[governing body]**'s decision shall be final, subject only to review by the Circuit Court of **[program authority]**.
- B. Final decisions of the **[program authority]** under this ordinance shall be subject to review by the **[program authority]** Circuit Court, provided an appeal is filed within 30 days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land-disturbing activities.